

ESTTA Tracking number: **ESTTA683457**

Filing date: **07/14/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222238
Party	Defendant BVR, LLC
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Submission	Answer
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Date	07/14/2015
Attachments	BVR_Answer_ex.pdf(150034 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

The Board of Regents of)	
The University of Texas System,)	
)	
Opposer)	Proceeding No.: 91222238
v.)	ESTTA Tracking No.:
)	ESTTA676332
)	
)	
BVR,LLC)	
Applicant)	
)	
Application Serial No.: 86/382,447)	
Filing Date: September 2, 2014)	
Mark: CANCER WISE EMPOWERING)	
PATIENTS & design)	
Published for Opposition May 26, 2015)	

ANSWER

BVR, LLC ("Applicant") owns Application Serial No. 86/382,447 for the mark CANCERWISE EMPOWERING PATIENTS & Design in International Class 045 for use in connection with digital mobile phone application platform as follows: (the "Application") and hereby answers the Opposition filed by The Board of Regents, The University of Texas System ("Opposer") by asserting the following:

Applicant's Answer to the allegations set out in the first unnumbered paragraph of the Opposition

Applicant has insufficient knowledge or information as to the truth of the allegations set out in the first unnumbered paragraph of the Opposition relating to Opposer's corporate status, place of business and belief relating to Applicant's mark in this proceeding, and therefore

denies the allegations in that paragraph pursuant to 2.106(b)(1) of the Trademark Rules of Practice (the "TRP").

Applicant's Answer to the allegations set out in the numbered paragraphs of the Opposition

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph 1 of the Opposition, and therefore pursuant to the TRP, denies those allegations.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph 2 of the Opposition, and therefore pursuant to the TRP, denies those allegations.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph 3 of the Opposition, and therefore pursuant to the TRP, denies those allegations.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph 4 of the Opposition, and therefore pursuant to the TRP, denies those allegations.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph 5 of the Opposition, and therefore pursuant to the TRP, denies those allegations.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph 6 of the Opposition, and therefore pursuant to the TRP, denies those allegations.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph 7 of the Opposition, and therefore pursuant to the TRP, denies those allegations.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph 8 of the Opposition, and therefore pursuant to the TRP, denies those allegations.

9. Applicant admits the allegations in erroneously numbered paragraph 12 of the Opposition and with the corrected paragraph number of paragraph 9.

10. Applicant admits the allegations in erroneously numbered paragraph 13 of the Opposition with the corrected paragraph number of paragraph 10.

11. Applicant denies the allegations in erroneously numbered paragraph 14 of the Opposition with the corrected paragraph number of paragraph 11 to the extent at time of filing Applicant's trademark, Opposer had no Federal mark.

12. Applicant denies the allegations in erroneously numbered paragraph 15 of the Opposition with the corrected paragraph number of paragraph 12.

13. Applicant denies the allegations in erroneously numbered paragraph 16 of the Opposition with the corrected paragraph number of paragraph 13.

14. Applicant denies the allegations in erroneously numbered paragraph 17 of the Opposition with the corrected paragraph number of paragraph 14.

15. Applicant admits the allegations regarding no permission or approval being given by Opposer to Applicant in erroneously numbered paragraph 18 of the Opposition with the corrected paragraph number of paragraph 15 but denies that permission or approval is required to use Applicant's mark.

16. Applicant denies the allegations in erroneously numbered paragraph 19 of the Opposition with the corrected paragraph number of paragraph 16.

17. Applicant denies the allegations in erroneously numbered paragraph 20 of the Opposition with the corrected paragraph number of paragraph 17.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in erroneously numbered paragraph 21 of the Opposition with the corrected paragraph number of paragraph 18, and therefore pursuant to the TRP, denies those allegations.

19. Applicant denies the allegations in erroneously numbered paragraph 22 of the Opposition with the corrected paragraph number of paragraph 19.

Affirmative Defenses

Applicant further alleges the following affirmative defenses which are now known to Applicant and reserves all rights to further plead affirmative defenses as become known to Applicant as required by TRP:

20. Applicant's prior registration (Morehouse defense) is first-in-time and has priority over Opposer to registration on the Principal Register.

21. Applicant's mark in the Registration (the "CANCERWISE EMPOWERING PATIENTS & Design") is not confusingly similar in sight, sound, and meaning to Opposer's marks listed in its Opposition.

22. Applicant's registration and use of the CANCERWISE EMPOWERING PATIENTS & Design") mark would not lead to confusion, mistake, and/or deception as to the origin or source of Applicant's services and would not lead consumers to believe they are affiliated with, approved, sponsored, or licensed by Opposer.

23. Applicant's services and channels of trade associated with its CANCERWISE EMPOWERING PATIENTS & Design mark are not similar or related to Opposer's services and channels of trade associated with its mark listed in its Opposition.

24. Applicant's registration and use of the CANCERWISE EMPOWERING PATIENTS & Design mark, particularly without limitation, with the services identified in the Application, will not result in confusion in trade with Opposer's services, cause dilution of Opposer's mark, diminution of Opposer's ability to control the quality of services sold under its mark, or cause irreparable damage and injury to Opposer.

25. Without waiving any other right to an Affirmative Defense available to Applicant, Applicant is at least entitled to a registration with a particular restriction to provide its goods and services via a mobile device or tablet application (commonly known as an "App") which to the best of Applicant's information and belief and without the benefit of discovery, Opposer has never provided mobile device or tablet application services to the public.

WHEREFORE, Applicant prays Opposer's Opposition be denied in full and that Applicant's mark U.S. Serial No. 86/382,447 be allowed to proceed to registration.

Respectfully submitted,



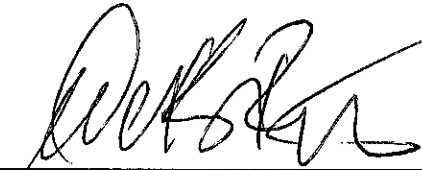
Date: July 14, 2015

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CERTIFICATION OF ELECTRONIC FILING
PURSUANT TO C.F.R. 37

I hereby certify that on July 14, 2015, this ANSWER to Opposition is being filed electronically with the United States Patent and Trademark Office using the *Electronic System for Trademark Trials and Appeals* (ESTTA).

Date: July 14, 2015



Walter B. Batt

CERTIFICATE OF SERVICE §2.119

I hereby certify that this correspondence is being served on counsel for the U.T. System, Alexandra H. Bistline, via First Class Mail at Pirkey Barber PLLC, 600 Congress Avenue, Suite 2120, Austin, TX 78701 on the following date:

Date: July 14, 2015



Walter B. Batt